

published in accordance with the provisions of the Municipal Acts.
Held, also, that the objection to a by-law that it was not sealed, when submitted to the electors was untenable.
 [21 U. C. C. P. 325.]

Anderson applied for a rule *nisi*, to quash a by-law in aid of the Canada Southern Railway Company, on the following grounds: 1. That the by-law was not advertised four times in each newspaper printed within the limits of the municipality.

2. That when it was submitted to the rate-payers, it was not sealed.

3. That it was not passed with the consent first had of a majority of the electors.

As to the first ground he referred to the Railway Act, chap. 66 of Con. Stat. Can. sec. 77.

On the third ground he referred to *Simpson v. County of Lincoln*, 18 C. P. 48; *Billings v. Municipal Council of Gloucester*, 10 U. C. Q. B. 278. *Curia advisari vult*.

HAGARTY, C. J.—The Railway Act of 1869, ch. 66, secs. 75 & 76, allows municipal corporations to subscribe for stock or lend money to railways, but forbids their so doing, "unless and until a by-law to that effect has been duly made and adopted with the consent first had of a majority of the qualified electors of the municipality, to be ascertained in the manner determined by the by-law, after public advertisement thereof, containing a copy of such proposed by-law, inserted at least four times in each newspaper printed within the limits of the municipality," &c.

The Municipal Act, chap. 54, sec. 346, contained provisions for taking stock and subscribing under this Railway Act; and the Municipal Act of 1866, sec. 349 had a similar provision, with the words, "But no municipal corporation shall subscribe for stock or incur a debt or liability for the purpose aforesaid, unless the by-law before the final passing thereof, shall receive the assent of the electors of the municipality in manner provided by this Act."

The Ontario Act, ch. 82, 88 Vic., incorporates "The Canada Southern Railway Company." Sec. 5 allows municipalities in addition to the powers conferred by the clause respecting Municipalities in the Railway Act, to give money by way of bonus, &c., to the company, "Provided always, that no such loan, bonus, &c., be given, except after the passing of the by-law for that purpose, and the adoption of such by-laws as provided by the Railway Act; provided always, that any such by-law to be valid, shall be in conformity with the laws of this Province respecting municipal institutions."

We have, then, these two provisions for a by-law giving a bonus to a railway company.

First.—It must be a by-law passed and adopted as provided by the Railway Act.

Secondly.—It must be a by-law made in conformity with the laws respecting municipal institutions.

The Railway Act provides for a by-law being made for the purpose of aiding the railway, and then for its adoption with the consent of the majority of the electors, leaving it to the by-law to determine how that majority is to be ascertained.

This would seem to satisfy the words in the last special Act as to passing and adoption, provided by the Railway Act.

Turning to the existing municipal law, we find sec. 196 (Act of 1866) provides, "In case a by-law requires the assent of the electors, &c., before the final passing thereof, the following proceedings shall be taken for ascertaining such assent." Provision is then made for fixing days of polling, &c.

Sub-sec. 2. The council shall, for at least one month before the final passing of the proposed by-law, publish a copy thereof in some newspaper published weekly or oftener in the municipality, &c.

Sub-sec. 4. That a poll be taken and proceedings conducted in the same manner as nearly as may be as at a municipal election.

Sub-sec. 6, directs the clerk of the council to add up the number of votes for and against the by-law, and to certify to the council under his hand, whether the majority have approved or disapproved of the by-law.

I am of opinion that the majority required to assent to a by-law, is not an absolute majority of all the existing qualified electors, but a majority of those coming forward to vote for or against the proposition submitted to them.

It stands thus:—

1. The assent of the majority is required.

2. It is devolved on the municipality to determine the manner in which the assent of such majority is ascertained.

3. The Legislature has further itself directed, that this is to be ascertained by giving full opportunity to all to vote, if they so desire.

4. The majority of those actually voting must be considered the majority of the electors.

I think this result is clear on the statutes.

The provision quoted as to the clerk certifying whether the majority have approved or disapproved, must certainly mean the majority on the poll-books. He could hardly in fact ascertain the actual majority of all existing electors, except by personal enquiry outside the poll-book. He might find 500 names on the assessment roll at the beginning of the year. Ten or twenty per cent. of that number might have died, or sold their property, and left the country, before the vote was taken.

It never could have been intended that an absolute majority must come forward and vote. The difficulties would be almost insuperable, and require most complicated machinery. Had the Legislature intended any such result, we may assume that very different language would have been used.

In the case before us the applicant does not venture to swear that a majority of the electors have not voted. He merely states that so many names appear on the assessment roll for 1870, and that a less number than half voted for the by-law, and asks us to infer therefrom that the law did not receive the assent of the majority.

As to the sufficiency of the notice, I think the proper construction is, that the notice provided in the Municipal Act is sufficient, and ought to govern.

The Railway Act requires it to be advertised four times at least in each newspaper published in the municipality. If only a daily paper existed, four insertions on four consecutive days would suffice. In a semi-weekly, two weeks would cover the time.

The Municipal Act makes a much better pro-